

STATEMENT OF ISSUES

I. Whether the Defendants' Counterclaim against James Swaby should have been dismissed.

The trial court held in the negative.

MOST RELEVANT AUTHORITIES

SDCL § 15-6-12(b)(4)

SDCL § 15-6-12(b)(5)

R.B.O. v. Priests of Sacred Heart, 2011 SD 86, 807 N.W.2d 808

Sisney v. State, 2008 SD 71, 754 N.W.2d 639

II. Whether the Defendants' Counterclaim adequately states a cause of action for Fraud/Deceit.

The trial court held in the affirmative.

MOST RELEVANT AUTHORITIES

Schipporeit v. Khan, 2009 SD 96, 775 N.W.2d 503

Sundt Corp. v. State ex re. S.D. Dep't of Trasnp., 1997 SD 91, 566 N.W.2d 476

Fisher Sand & Gravel Co. v. SDDOT, 1997 SD 8, 558 N.W.2d 864

Western Casualty & Surety Co. v. Gridley, 362 N.W.2d 100, 102 (S.D. 1985)

Bruske v. Hille, 1997 SD 108, 567 N.W.2d 872

III. Whether the trial court should have excluded certain evidence offered by the Defendants at trial.

The Trial Court held in the negative.

MOST RELEVANT AUTHORITIES

SDCL § 19-12-1

SDCL § 19-12-4

SDCL § 19-14-10

Equipment Service Professional, Inc. v. Denowh, 2005 SD 20, 693 N.W.2d 54

State v. La, 540 N.W.2d 180 (S.D. 1995)

A. Whether the trial court erred in denying the Statons' Motion for Partial Summary Judgment and Motion for Directed Verdict when there was clear testimony that Swaby completed install jobs in violation of the contract.

The trial court denied the motions.

Legal Authority:

SDCL § 53-9-9

Franklin v. Forever Venture, Inc., 2005 SD 53, 696 N.W.2d 545.

Brown v. Edsall, 122 N.W. 658 (1909).

B. Whether the trial court erred in denying pre-judgment interest to the Statons?

The trial court declined to award pre-judgment interest even though this Court has found that pre-judgment interest is mandatory.

Legal Authority:

SDCL § 21-1-13.1

Bunkers v. Jacobson, 2002 SD 135, 653 N.W.2d 732

Alvine v. Mercedes-Benz of North America, 2001 SD 3, 620 N.W.2d 608

C. Whether the trial court erred when it unilaterally answered a question from the jury regarding fraud and deceit without giving the parties notice and an opportunity to be heard?

The trial court improperly addressed the jury questions without giving notice or an opportunity to be heard by either party.

Legal Authority:

Duda v. Phatty McGees, Inc., 2008 SD 115, 758 N.W.2d 754.

D. Whether the trial court properly denied Swaby's motion to dismiss for insufficient service of process pursuant to SDCL § 15-6-12(b)(4) and motion to dismiss for failure to state a claim upon which relief can be granted pursuant to SDCL § 15-6-12(b)(5)?

The trial court properly denied the motion to dismiss pursuant to SDCL § 15-6-12(b)(4) and found that the Statons satisfied SDCL § 15-6-12(b)(5).

Legal Authority:

SDCL §§ 15-6-12(b)(4) and (5), 15-6-12(h), 15-6-4(d)

R.B.O. v. Priests of Sacred Heart, 2011 SD 86, 807 N.W.2d 808

Wagner v. Truesdell, 1998 SD 9, 574 N.W.2d 629

Grajczyk v. Tasca, 2006 SD 55, 717 N.W.2d 624

E. Whether the trial court properly denied Swaby's Motion for Summary Judgment and found the Statons adequately stated a claim for fraud?

The trial court found that the Statons produced sufficient evidence to pursue a claim for fraud and deceit.

Legal Authority:

Grynberg v. Citation Oil & Gas Corp., 573 N.W.2d 493 (S.D. 1997)

Hoffman v. Louis Dreyfus Corp., 435 N.W.2d 211 (S.D.1989)

F. Whether the trial court properly denied Swaby's Motions in Limine?

The trial court denied the motions in limine.

Legal Authority:

SDCL §§ 19-12-5, 19-14-9

Ferebee v. Hobart, 2009 SD 102, 776 N.W.2d 58

State Highway Commission v. Earl, 143 N.W.2d 88 (S.D. 1966)

Schoenrock v. City of Sisseton, 103 N.W.2d 649 (S.D. 1960)